

Remarks

The Applicants acknowledge the objection to the Specification with respect to providing proper antecedent basis. The Applicants have accordingly amended the Specification at several locations to address the specific items helpfully suggested by the Examiner. A number of those items have not been further amended. However, the Applicants point out the exact location of the antecedent basis that already exists in the Specification for those that were not amended.

One amendment may be found at page 2, at line 20, wherein the sentence “Injection molding provides a seamless garment.” has been added. Those of ordinary skill in the art readily know that injection molded items do not have seams. In this case, the items that are being molded are garments. Therefore, injection molding provides seamless garments.

Page 2 has further been amended at line 26 to change “shoulders” to --shoulders/neck--. This provides the appropriate antecedent basis for the subject matter regarding the doll is articulated at a joint selected from the group consisting of neck and hips.

Page 4 has been amended at the end of line 4 to recite “In other words, the garment has a molded shape to fit over the varied surfaces of the doll.”

The antecedent basis for the remaining items mentioned in the Official Action are all found at varying locations on page 2. Specifically, the average modulus of elasticity being less than 1 MN/M² is found at lines 3 – 4. The 100% modulus of elasticity being between 240 and 280 KN/M² may be found at lines 5 – 7. The 300% modulus of elasticity between 440 and 490 KN/M² may be found at lines 8 – 9. Finally, the 100% modulus of elasticity being between 120 and 350 KN/M² may be found at lines 5 – 7. Accordingly, the Applicants respectfully submit that no further amendments are necessary. Claim 27 has been cancelled.

The Applicants acknowledge the rejection of Claims 31 – 32, 41 – 43 and 50 – 51 under 35 U.S.C. §112. The 100% and 300% modulus of elasticity are terms well known in the art. The Applicants enclose an excerpt from the Glossary of Urethane Terminology which explains, for example, a 300% modulus. Withdrawal of the rejection is respectfully requested.

The Applicants acknowledge the rejection of Claims 21 – 22, 27, 30 – 32, 41 – 43, 47 and 50 – 51 under 35 U.S.C. §112, first paragraph. The Applicants invite the Examiner's attention to the above amendments made to the Specification and the recitation of the locations of the existence of such subject matter in the Specification. The Specification now provides appropriate support for all of the claimed subject matter.

Turning now to the merits, the Applicants acknowledge the rejection of Claims 21 – 23, 25 – 28 and 30 – 33 over the hypothetical combination of O'Brian with Kramer. Kramer is an interesting disclosure inasmuch as it contains language that is literally applicable to portions of the claims, but essentially has nothing to do with this invention. Kramer specifically refers to a sheet system wherein sheets of material having selected characteristics may be formed into essentially a planar doll shape, among other planar shapes. The characteristics of the sheet are selected so that, when wetted, the sheet will stick to a hard surface such as a ceramic surface by virtue of surface tension between the sheet and the hard surface as created by an intervening layer of water. This is shown in Fig. 3 of Kramer.

Additionally, another layer of similar planar sheet material, cut into the form of clothes, is first wetted and then laid over the doll shaped sheet. Thus, a child can form dolls on essentially the tiles adjacent a bathtub and vary the clothing associated with that doll. Again, surface tension and

the intervening water layer between the doll-shaped sheet and the clothes sheets allows that system to function in the intended manner.

Of course, this has nothing to do with this invention. This invention relates to dolls that are not characterized as planar, but are known in the ordinary three-dimensional sense and also involves doll's garments which also have a three-dimensional shape. The garments are molded in particular shapes such that they will fit over the varied three-dimensional surfaces of portions of the doll. The garments of the invention do not rely on the presence of water created surface tension to achieve the fit on the doll.

As a consequence, the polymer plastic material of Kramer is not selected for the same reasons that the thermoplastic elastomer material of the invention is selected. Moreover, the thicknesses of Kramer are not selected for even remotely the same purposes as the thicknesses of this invention. In any event, as the Examiner frankly acknowledges, Kramer does not disclose a seamless injection molded thermoplastic elastomer doll's garment. This is clearly a critical deficiency in Kramer. This is especially true for the "injection molded" portion which will become apparent below.

O'Brian relates to doll structures in more of the conventional sense and, as a consequence, one of ordinary skill in the art would have utterly no incentive or motivation to combine O'Brian with Kramer. For example, the clothing disclosed by O'Brian, such as that shown in Figs. 2 and 3, is shaped to "snap" onto the doll as shown in Fig. 1. Such "snapping" action is a totally different mechanism to achieve positioning of the clothing relative to the doll as compared to Kramer, which utilizes water created surface tension. For this reason alone, one of ordinary skill in the art would have no incentive to make the hypothetical combination.

However, it makes no difference whether one of ordinary skill in the art would have motivation to combine O'Brian with Kramer. The reason for this is simple. O'Brian fails to disclose, teach or suggest injection molded thermoplastic elastomer. In that regard, the Applicants note with appreciation the Examiner's helpful and detailed comments concerning such disclosure. The Official Action points to Column 3, lines 54 – 56 of O'Brian. That portion of the text is reproduced below in its entirety. In fact, the entire sentence in which that language is contained is reproduced below. That sentence spans lines 52 – 61 of Column 3 of O'Brian.

Preferably in manufacturing the doll 10 and the various articles of apparel illustrated, as well as the base utilized with this doll 10, a flat sheet 34 of any number of a number of thermoplastic materials, such as, for example, polyethylene, polystyrene or the like, is printed or otherwise similarly colored substantially as indicated in Fig. 6 of the drawings in various colors and shapes, etc. so that different portions of the sheet 34 correspond to the doll 10 and the various articles of apparel it is desired to utilize with this doll.

Unfortunately, this portion of O'Brian is not applicable because it does not anywhere mention the word "injection". There is also no mention of "elastomer." In fact, the Applicants have carefully scrutinized the entire text of O'Brian and the word "elastomer" never appears at any location. There simply is no reference to elastomer in O'Brian. This is because the clothing of O'Brian is rigid (or semi-rigid under a liberal interpretation) and clipped on. This fact is critical because the clip-on clothing of O'Brian is just the type of clothing that this invention seeks to avoid and overcome. Those of ordinary skill in the art would not look to O'Brian because it is difficult to use and is completely different.

In any event, even if one of ordinary skill in the art were to hypothetically combine O'Brian with Kramer, the resulting product from the hypothetical combination would still fail to even mention, much less teach or suggest, injection molded elastomer. The reason is that both disclosures

never even mention “injection molded elastomer”. As a consequence, the combination of disclosures is non-enabling. The Applicants, therefore, respectfully submit that the rejection of Claims 21 – 23, 25 – 28 and 30 – 33 over the hypothetical combination of O’Brian with Kramer must fail. Withdrawal of that rejection is respectfully requested.

The Applicants acknowledge the rejection of Claims 20 and 29 under 35 U.S.C. §103 over the hypothetical combination of O’Brian with Kramer and further in view of Yasuda. Unfortunately, Yasuda fails to provide teachings or suggestions that satisfy the deficiencies of the original combination of O’Brian with Kramer. Unlike O’Brian, Yasuda does mention injection molding. Such mention may be found at Column 5 in the paragraph beginning at line 40. However, injection molding is not mentioned in a context that is applicable in the hypothetical combination. Specifically, Yasuda refers to injection molded resin layers such as the layers 2A, 3 and 2B as shown in Figs. 1 – 9, for example, of Yasuda. Those injection molded layers/articles are then laminated with other films to form a resulting resin molded article. However, that is not what the Applicants do and not what the Applicants claim. The Applicants’ garments are actually injection molded thermoplastic elastomer. Moreover, those injection molded thermoplastic elastomer garments are seamless, which is inherently not the case in Yasuda by virtue of the fact that the articles are laminated as shown in the many Yasuda figures which illustrate the inherently resulting seams associated with laminating multiple layers together. As a result, even if one of ordinary skill in the art were to hypothetically combine Yasuda with either or both of O’Brian and Kramer, the resulting doll garment structure would still be different from that recited in Claims 20 and 29. Withdrawal of the rejection is respectfully requested.

The Applicants acknowledge the rejection of Claim 34 over the hypothetical combination of O'Brian with Kramer as mentioned above and further in view of Gross. Unfortunately, Gross also fails to provide disclosure, teachings or suggestions that would cure the deficiencies set forth above with respect to Kramer and O'Brian. There is simply no discussion of the claimed injection molding and, as a consequence, even if one of ordinary skill in the art were to make the hypothetical combination of both of Gross and O'Brian with Kramer, the resulting structure would still not be, teach or suggest the claimed injection molded thermoplastic elastomer doll's garment. Withdrawal of the rejection of Claim 34 is respectfully requested.

The Applicants acknowledge the rejection of Claims 35 – 37 over the hypothetical combination of Yasuda, Gross and O'Brian with Kramer. The Applicants respectfully submit that this combination, even if made, would still fail to teach or suggest the invention as recited in Claims 35 – 37. As noted above, in the other rejections, all of Kramer, O'Brian, Gross and Yasuda fail to disclose, teach or suggest injection molded thermoplastic elastomer doll's garments. Thus, even if the combination is made, the resulting structure is still different. Withdrawal of the rejection of Claims 35 – 37 is respectfully requested.

The Applicants acknowledge the rejection of Claims 38 – 51 based on the hypothetical combination of Gross, Yasuda and O'Brian with Kramer. This rejection also fails for the same reasons set forth above with respect to the rejection of Claims 35 – 37. Withdrawal of that rejection is also respectfully requested.

As a final point, the Applicants note that a wide variety of hypothetical combinations of a myriad of different prior art disclosures have been hypothetically combined to reject the solicited claims. However, those hypothetical combinations have either not been appropriate or, even if made,

still fail to teach or suggest the invention. Also, they rely on the notoriously tempting concept known as “hindsight.” This technology is not especially complicated and is, therefore, susceptible to its use. However, hindsight is strictly forbidden, irrespective of the relative complexity of the claimed subject matter.

In the real world, the Applicants were the first to invent the claimed subject matter and have licensed that subject matter to a well known toy manufacturer. Since the subject matter was licensed, this invention has revolutionized fashion play in small dolls and the licensee will have sold over \$440,000,000 worth of product covered by the solicited claims around the world and over \$220,000,000 in the U.S. in five years by the end of this year. A chart of sales is as follows:

<u>Year</u>	<u>Worldwide</u>	<u>USA</u>
1999	8	7.5
2000	30	15
2001	78	38
2002	127	62
2003	200	100
Total	443	222.5

The above figures do not include sales of boy's figures to licensees other than the one mentioned above. To obtain the retail value of the above sales, it would be necessary to double or triple those figures (which are licensee's sales value). In other words, sales of product with molded elastic clothes that are the subject of the solicited claims have exceeded \$1 billion in five years at retail value worldwide.

Also, this year the product, sold under the name "Fashion Polly" (under the Polly Pocket brand), was awarded the coveted Toy of the Year by Mattel (the world's largest toy company). The product has single-handedly rescued a brand name (Polly Pocket) from the verge of extinction in 1999 and turned it around to be the best selling small doll in the world.

The undeniable commercial success of the product that is the subject of the license is because of the Applicants' invention and not due to inordinate quantities of advertising. In fact, the amount of advertising spent on the product is below the "spend to sales ratio" of competitive toys. Also, unlike many of its peer products in boy's and girl's toys, it has not been the subject of any cartoon or other entertainment support along with the usual merchandising campaigns (e.g., like a Disney property, or Barbie). In spite of below average expenditure of funds in marketing the product, it has been a resounding success and has spawned many attempts by others to enjoy the financial rewards provided the Applicants' advance in this art. There is no clearer proof in the real world of the non-obviousness of this product as set forth by the commercial success described above and the overt copying by others that is present at this moment. The Applicants accordingly respectfully submit that the solicited claims are fully deserving of the patent grant and respectfully request allowance of this Application.

In light of the foregoing, the Applicants respectfully submit that the entire Application is now in condition for allowance, which is respectfully requested.

Respectfully submitted,



T. Daniel Christenbury
Reg. No. 31,750

TDC:lh
(215) 656-3381